IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3202 OF 2004

Shrenik Shah ... Petitioner

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. J.S. Kini for the petitioner.
Mr. Pradeep Jadhav, AGP for respondent No. 1.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 6th November, 2006

P.C.

. Heard counsel for the petitioner. Respondent No. 2 had taken out proceeding under provisions of Debt Recovery Act. An ex-parte order came to be passed and an application was moved for setting aside the ex-parte order dated 18.12.2001. By order dated 03.09.2002 the learned DRT held that the petitioner was duly served and accordingly dismissed the application. An appeal was preferred and the same was also dismissed. The order dated 05.08.2004 is the subject matter of the present petition.

2. Insofar as the cause is concerned, we do not find that the order of the Tribunal suffers from any error apparent on the face of the record. However, we

find that while passing the order, DRT has granted interest with quarterly rests from the date of the suit till realisation of the amount, which the petitioner claims to be without jurisdiction. Interest with quarterly rests can be granted only in the event there is default in the payment of interest. Once there is decree and order, there is no question of granting interest with quarterly rests. We find, therefore, the Tribunal committed a serious error of law which is apparent on the face of the record, which requires correction in the exercise of our extra-ordinary jurisdiction.

3. We find from the Roznama that the notice on the bank could not be served as the bank has shifted premises. We do not propose to interfere with the order awarding the sum of Rs. 17,37,469=13. However to the extent of interest with quarterly rests. We remand the matter back to the DRT for considering the interest to be granted in terms of what we have stated.

4. DRT to dispose of the matter after notice to the petitioner and the bank within eight weeks. Petitioner to appear before DRT on 13th November, 2006

at 11.00 a.m. If respondents are still aggrieved by this order, liberty to them to apply to this Court for recalling the order.

5. To that limited extent, the petition is allowed and rule made partly absolute accordingly. No order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]